

The Honorable Ronald B. Leighton



04-CV-05052-ORD

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

**FEDERATED RURAL ELECTRIC
INSURANCE EXCHANGE and TIG
INSURANCE COMPANY.**

NO. CV04-05052 RBL

[PROPOSED]

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT AND
DIRECTING ENTRY OF 54(B)
JUDGMENT AGAINST PLAINTIFF
TIG INSURANCE COMPANY**

Plaintiffs,

Y

**PUBLIC UTILITY DISTRICT NO. 1 OF
COWLITZ COUNTY, WASHINGTON, a
Washington municipal corporation.**

Defendant.

THIS MATTER comes on before the Court on 1) Defendant Public Utility District No. 1 of Cowlitz County's ("the District" or "PUD") Motion to Enter Judgment Against TIG Pursuant to Appraisal Findings (Dkt. No. 246); 2) the District's Motion for Attorneys Fees, Prejudgment Interest, and Other Damages (Dkt. No. 266); 3) TIG's Motion for Summary Judgment and Alternative Motion for Partial Summary Judgment (Dkt. No. 249); and 4) Plaintiff TIG Insurance Company's Motion for partial Summary Judgment Re: Extra-Contractual Claims (Dkt. No. 268).

As reflected in this Court's June 18, 2007 Minute Entry (Dkt. No. 282), and as further explained by the Court during the hearing on these motions conducted on June 14, 2007, the Court's rulings are as follows:

**[PROPOSED] ORDER ON MOTIONS FOR
SUMMARY JUDGMENT AND DIRECTING
ENTRY OF 54(B) JUDGMENT**
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1 Plaintiff TIG Insurance Company's ("TIG") Motion for Summary Judgment and
2 Alternative Motion for Partial Summary Judgment is GRANTED IN PART AND DENIED IN
3 PART, as follows:

- 4 • TIG's motion seeking summary judgment based on the contention that TIG has
5 no liability because underlying insurance coverage provided by Federated Rural
6 Electric Insurance Exchange ("Federated") has not been exhausted is DENIED.
- 7 • TIG's alternative motion seeking to reduce the amount it owes by \$4,500,000
8 based on the argument that additional coverage limits in the Federated policy
9 were not exhausted is DENIED.
- 10 • TIG's motion regarding claim presentation costs is GRANTED.
- 11 • TIG's motion regarding the Lloyd's deductible is GRANTED IN PART. TIG
12 is entitled to apply a one time credit of \$500,000 for the Lexington/Lloyd's of
13 London insurance policy deductible and a credit of \$100,000 reflecting the
14 Federated policy deductible.
- 15 • TIG's motion regarding foundation/stabilization work or remediation of
16 subsurface conditions is DENIED.
- 17 • TIG's motion regarding interest on construction loans is DENIED.
- 18 • TIG's motion regarding costs incurred prior to July 5, 2006 (including, e.g.,
19 construction insurance, financing, and miscellaneous expenses) is DENIED.
- 20 • TIG's motion regarding spillway/wasteway expenses is DENIED.
- 21 • TIG's motion regarding legal expenses related to the District's dispute with its
power canal contractor is DENIED.

22 Plaintiff TIG's Motion for Partial Summary Judgment Re: Extra-Contractual Claims is
23 DENIED, WITHOUT PREJUDICE. The extra-contractual claims that are the subject of that
24 motion have heretofore been bifurcated and will be the subject of later proceedings.

25 Defendant PUD's Motion for Attorney's Fees, Prejudgment Interest, and Other
Damages is GRANTED IN PART and DENIED IN PART. The District's motion for

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1 attorneys' fees, costs, and expenses pursuant to Olympic SS. Co. v. Centennial Ins. Co. is
 2 GRANTED, affording the District a recovery of its reasonable attorneys' fees and costs
 3 associated with proving coverage.

4 Defendant PUD's Motion to Enter Judgment Against TIG Pursuant to Appraisal
 5 Findings is GRANTED, as follows:

6 Pursuant to the Findings of the Appraisal Panel (Dkt. 245) and the Amended Findings
 7 of the Appraisal Panel (Dkt. No. 274), the District's total damages are \$125,497,225, including
 8 claim presentation costs. The damages net of claim presentation costs total \$124,509,983
 9 (\$125,497,225 - \$987,242 claim presentation costs = \$124,509,983). As established by prior
 10 rulings of the Court, these damages are covered under either the Lexington and Lloyd's
 11 Difference In Conditions insurance policies or the Federated and TIG All-Risk property
 12 insurance policies. TIG is liable for the District's losses to the extent they exceed the
 13 combined \$70,000,000 coverage and \$500,000 deductible of the Lexington and Lloyd's
 14 policies and the \$25,000,000 coverage and \$100,000 deductible of the Federal policy. The
 15 District is therefore entitled to recover \$28,909,983 against Plaintiff TIG for direct damages
 (\$124,509,983 - \$70,000,000 - \$500,000 - \$25,000,000 - \$100,000 = \$28,909,983).

16 The Court also awards the Defendant District the sum of \$850,000 in attorneys' fees
 17 and costs under Olympic Steamship through July 31, 2006, which amount was stipulated to as
 18 reasonable by both parties (Dkt. 284).

19 Pursuant to Federal Rule of Civil Procedure 54(b), the Court finds that there is no just
 20 reason for delay and hereby directs the Clerk to enter a final judgment against Plaintiff, TIG
 21 Insurance Company, in favor of the Defendant District in the amount of \$29,759,983
 22 (\$28,909,983 direct damages + \$850,000 attorneys' fees and costs through July 31, 2006 =
 23 \$29,759,983). This final judgment is entered with respect to all of the parties' contractual
 24 claims that were the subject of the motions resolved in this Order and the Court's earlier
 25 findings on coverage as reiterated herein. This case involves (1) contractual claims, which are
 the subject of this order and which have now been fully resolved, and (2) extra-contractual

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1 claims, which have been bifurcated. Certification will not result in unnecessary appellate
2 review, and review of the contractual claims will not be mooted by any future developments in
3 the case.

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5 DATED this 6th day of July, 2007

6 
7 HON. RONALD B. LEIGHTON
8 United States District Judge

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